

Weston Kubbe #237851
Attorney Pro Se
PO Box 250
Draper UT 84020

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

Weston Kubbe
Petitioner

vs

State of Utah
Respondent

MOTION TO ADDRESS TIME BARR
REQUIREMENTS PURSUANT TO
28 USC §2254

Case: 1:21-cv-00038-HCN.

Judge:

Pursuant to 28 USC §2254, Writ of Habeas Corpus, Weston Kubbe, is offering an explanation in regards to the March 16, 2021 filing of his Habeas Corpus.

BACKGROUND

On March 12, 2020, the Utah Supreme Court denied Mr. Kubbe's Writ of Certiorari.

On March 12, 2021, Mr. Kubbe filed a Writ of Habeas Corpus with the help of Mr. Kubbe's mother.

This motion was filed with the Utah Supreme Court on March 12, 2021 at 11:16 A.M. (see attachment 1)

Mr. Kubbe received a letter on March 16, 2021, from the clerk of the Supreme Court indicating that the motion was filed in the wrong court. (see attachment 2)

Mr. Kubbe was notified that a pro se attorney would need to submit a payment for \$5.00 and resubmit the motion to the United State District Court. (see attachment 3)

The Habeas Corpus was refiled and received and opened on March 16, 2021.
(see attachment 4)

ARGUMENT

Mr. Kubbe has shown good cause that the Writ of Habeas Corpus was timely filed on March 12, 2021. Mr. Kubbe is currently incarcerated at the Utah State Prison where no access to computers are permitted and the writ was beyond the scope of contract attorney. Mr. Kubbe relied on his mother to not only type his hand written writ, but also file the writ and all of its attachments in order to confirm receipt. Because of misunderstanding between Mr. Kubbe's mother and the clerk of the court, the writ was filed in the wrong court. It was immediately rectified as soon as the mistake was called to Mr. Kubbe's attention.

As this court is aware, the United States Supreme Court recognized the limitations on incarcerated inmates and has ruled in favor by stating, pro se complaints are held to less stringent standards than formal papers drafted by lawyers and pro se applications for relief under §2253 construed liberally. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972)). *Boag v. MacDougall*, 454 U.S. 364 (1982).

CONCLUSION

Mr. Kubbe acting under 28 USC 2263 (b)(3)(B) has shown good cause for the timely concern of filed the Writ of Habeas Corpus.

Therefore, Mr. Kubbe respectfully asked this court to allow the Writ of Habeas Corpus to move forward without being time barred.

Respectably submitted on this 18th day of May, 2021.



Weston R. Kubbe
Attorney, Pro Se

Declaration of Heidi Kubbe
Mother of Weston Kubbe

After typing up the hand written copy of the Writ of Habeas Corpus for my son, Weston Kubbe, I looked on the internet to try to determine where to file the motion. Not knowing anything about law or filing motions I reached out to the Supreme Court Clerk and asked if there is where I file a writ. She said it was. I also asked about the \$5.00 fee, because my son had indicated that I would need to pay one. She said there was no fee. She also said that I could email the motion instead of mailing it and gave me the email address. I immediately emailed the document and received a return email stating that it had been received.

On March 16, 2021, my son received an email stating that the motion went to the wrong court. I called up the clerk of the United States District Court and asked how I would handle this going forward. She said that I would need to pay a \$5.00 fee and she would file it as soon as it was paid. I asked how that was done and she gave me the information. I asked her if I needed to email another copy of the writ and she said no, that she had the one that was filed at the Supreme Court. I paid the \$5.00 and the clerk sent me notice that the motion was filed. Both clerks were very helpful and pleasant.

Even though it was filed on March 16, 2021, I went through the motions to try to get it filed timely on March 12, 2021. I feel that with my lack of understanding and knowledge of the legal system and with some misunderstanding on the clerk's part, this late filing was no fault of my son's. I am hoping that you do not deny him for my mistake and accept his writ as being timely.

Respectfully submitted this 18th day of May, 2021.



Heidi Kubbe
Mother of Weston Kubbe

ATTACHMENT 1



Weston Kubbe <wkubbe@kubbemail.com>

Re: WRIT OF HABEAS CORPUS

1 message

Utah Supreme Court <supremecourt+canned.response@utcourts.gov>
To: wkubbe@kubbemail.com

Fri, Mar 12, 2021 at 11:16 AM

Your emailed attachment has been received by the Utah Supreme Court. If additional information is necessary you will be contacted.

Please be sure that all other parties to the appeal were included as email recipients. Rule 21 requires service of all documents.

Utah Supreme Court Clerk's Office
450 S State ST N51
PO BOX 140210
Salt Lake City UT 84114-0210
(801) 578-3900 EXT 1

Please refer to Utah Supreme Court Standing Order No. 11 regarding filing of documents by email. A document is deemed filed when the email is received. Paper copies are not required unless filing a brief under Rule 24 or Rule 25. Beginning March 1, 2019, principal briefs will be docketed as filed on the date the email was received.

ATTACHMENT 2



Rick Stiles
Appellate Court Administrator
Nicole I. Gray
Clerk of Court

Supreme Court of Utah
450 South State Street
P.O. Box 140210
Salt Lake City, Utah 84114-0210

Appellate Clerks' Office
Telephone 801-578-3900
Email:supremecourt@utcourts.gov

Matthew B. Durrant	Chief Justice
Thomas R. Lee	Associate Chief Justice
Deno S. Dimonas	Justice
John A. Pearce	Justice
Paige Petersen	Justice

March 16, 2021

WESTON KUBBE #237851
PO BOX 250
DRAPER UT 84020

Re: Federal Writ of Habeas Corpus

Dear Weston Kubbe:

I am writing to regarding a Writ of Habeas Corpus pursuant to U.S.C. §2254 captioned for the United States District Court for the District of Utah but received in the Utah Supreme Court on March 12, 2021. This petition appears to seek relief from a conviction or sentence by a person in state custody. A copy of the form and instructions from the United States District Court is included with this letter. Your petition should be directed to:

United States District Court
District of Utah
351 S West Temple Rm 1.100
Salt Lake City UT 84101
utdecf_clerk@utd.uscourts.gov

The Utah Supreme Court makes no representations as to the timeliness of this petition. I am returning your petition at this time to be filed with the appropriate court.

Respectfully,

A handwritten signature in black ink, appearing to read "Nicole I. Gray".

Nicole I. Gray
Clerk of the Court

cc: Utah Attorney General's Office
United States District Court for the District of Utah

ATTACHMENT 3



Weston Kubbe <wkubbe@kubbemail.com>

RE: WRIT OF HABEAS CORPUS

UTDecf Clerk <UTDecf_Clerk@utd.uscourts.gov>
To: Weston Kubbe <wkubbe@kubbemail.com>

Tue, Mar 16, 2021 at 11:14 AM

Mr. Kubbe,

We will need a \$5.00 payment before we can accept this Habeas Corpus and we have attached an IFP Application if that's preferable. Please send this document again once you have paid the fee amount or if you decide to go with the IFP Application.

Thank you,

Noemí Torres

Deputy Clerk

United States District Court for the District of Utah

From: nicoleg@utcourts.gov <nicoleg@utcourts.gov> **On Behalf Of** Utah Supreme Court
Sent: Tuesday, March 16, 2021 11:03 AM
To: Weston Kubbe <wkubbe@kubbemail.com>
Cc: criminalappeals 2 <criminalappeals@agutah.gov>; UTDecf Clerk <UTDecf_Clerk@utd.uscourts.gov>
Subject: Re: WRIT OF HABEAS CORPUS

CAUTION - EXTERNAL:

Dear Mr. Kubbe,
Please see the attached letter.

Respectfully,

Utah Supreme Court Clerk's Office

450 S State ST N51

PO BOX 140210

Salt Lake City UT 84114-0210

(801) 578-3900 EXT 1

ATTACHMENT 4



Weston Kubbe <wkubbe@kubbemail.com>

RE: WRIT OF HABEAS CORPUS

1 message

UTDecf Clerk <UTDecf_Clerk@utd.uscourts.gov>
To: Weston Kubbe <wkubbe@kubbemail.com>

Fri, Mar 26, 2021 at 12:16 PM

Weston,

Your Habeas Corpus was indeed received and opened on the 16th of March. Your case # is 1:21-cv-00038-HCN.

From: Weston Kubbe <wkubbe@kubbemail.com>
Sent: Friday, March 26, 2021 12:04 PM
To: UTDecf Clerk <UTDecf_Clerk@utd.uscourts.gov>
Subject: Re: WRIT OF HABEAS CORPUS

CAUTION - EXTERNAL:

Deputy Clerk

United States District Court for the District of Utah

I filed a Habeas Corpus last week. I was wondering if a case number has been assigned yet. If so, could you please email me that information?

Thank you

Weston Kubbe

Attorney Pro Se

Utah State Prison

On Tue, Mar 16, 2021 at 11:14 AM UTDecf Clerk <UTDecf_Clerk@utd.uscourts.gov> wrote:

Mr. Kubbe,